IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 11399 of 2007
Date of Decision: 25.9.2007

Simranjit Singh Mann.

…… Petitioner through Shri Ranjan Lakhanpal, Advocate

Versus

State of Punjab and others

……. None for Respondents

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR. JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

The petitioner has filed the present writ petition by way of public interest litigation with a prayer that respondent nos. 1 and 2 be directed to transfer the proceedings of the Criminal case pending against respondent nos. 3 to 5 under the Prevention of Corruption Act, 1988 before the Special Judge, Ropar to any other Court outside the State of Punjab.

The grievance of the petitioner is seeped in the apprehension that the trial being conducted against respondent nos. 3 to 5 at Ropar is likely to be prejudiced as respondent no. 3 is presently the Chief Minister

of the State of Punjab, whereas respondent nos. 4 and 5 are his wife and son, respectively and he is likely to influence the outcome of the trial, the indications of which are already available as most of the witnesses examined so far have resiled from their statements which were given to the Vigilance Bureau/Police during the course of investigation. To substantiate his plea, he has placed on record the statements of the witnesses, who have since chosen not to support the prosecution case.

We have heard the learned counsel for the parties.

A perusal of the wit petition and the documents annexed therewith does not, in any way, enlighten the Court as to the basis of the apprehension of the petitioner.

The reliance placed by Shri Lakhanpal in K.Anbazhagan v. Superintendent of Police and others, (2004) 3 SCC 767 does not help the case of the petitioner. In the said case, the facts indicated that the Public Prosecutor had acted hand in glove with the accused. The re-call of witnesses in the said case was on account of the fact that counsel for the accused respondent had been busy attending to some other case filed against the said respondent when the said witnesses were first examined. Another factor which was taken into consideration by the Supreme Court, while transferring the case, was that the presence of the accused had been dispensed with during her examination under Section 313 of the Code of Criminal Procedure and instead a questionnaire was sent to her for reply and the said procedure was unknown to law and the Public Prosecutor had not objected to the application of the accused for dispensing with her presence at the time of examination under Section 313 of the Code of Criminal Procedure.

If a witness resiles from his/her statement from the earlier testimony and the Public Prosecutor does not declare him/her hostile and does not cross-examine them by resorting to Section 154 of the Evidence Act, then a great prejudice is caused to the prosecution culminating in miscarriage of justice. Time and again, we have asked Shri Lakhanpal to tell the Court as to how miscarriage of justice had been done on the basis of parameters laid down in K.Anbazhagan's case (supra). The Supreme Court, while interpreting the scope of Section 406 of the Code of Criminal Procedure, in Gurcharan Dass Chadha v. State of Rajasthan, AIR 1966 SC 1418 laid down as under:

> "A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The court has further to see whether the apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be

entertained, but must appear to the court to be a reasonable apprehension."

In Menaka Sanjay Gandhi v. Ram Jethmalani, (1979) 4 SCC 167, the Supreme Court observed as under:

"Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

It is true that justice must not only be done but must be seen to be done, free and fair trial being the foundation of criminal jurisprudence but in the absence of the material, which we have pointed out, merely because witnesses have somersaulted will not ipso facto be an indicator of the fact that the trial is being subverted. A court is not helpless

as it is vested with sufficient powers to ensure a fair trial and to deal with the witnesses, who purposely do not, either come out with the truth or make conscious attempts to conceal the truth.

We are also mindful of the fact that the petitioner, who has filed the present petition, is a political activist himself. The Court cannot permit itself to be used as an unwitting tool to the machinations of political personalities whose actions stem from skepticism and cynicism bordering on contempt for other political personalities and use the Courts as a turf for their battles.

We, therefore, do not find any reason to interfere in the present case.

Dismissed.

(Vijender Jain)
Chief Justice

(Mahesh Grover)
Judge

September 25,2007
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